

SUPREME COURT OF SEYCHELLES

Reportable

[2023] SCSC 185

CA21/2021

In the matter between:

JUNIA ALBERT & ORS

(rep. by Mr Guy Ferley)

Appellants

and

HILL VIEW RESORTS SEYCHELLES LTD

(rep by Olivier Chang-Leng)

Respondent

Neutral Citation: *Junia Albert & Ors v Hill View Resorts Seychelles Ltd* (CA21/2021)

[2023] SCSC185 (10 March 2023)

Before: Esparon J

Summary:

Heard: 10 March 2023

Delivered: 10 March 2023

JUDGMENT

ESPARON J

Introduction

1. This is an Appeal against the Ruling of the Employment Tribunal given on the 10th of August, 2021 in ET 07/20 where the Employment Tribunal held the following;

“In the Circumstances, the Tribunal is satisfied that the Applicants termination was lawful and in accordance with Section 47(1) and 50 of the Employment Act. We are further satisfied that the Applicants were paid all their statutory entitlements upon the termination of the contract and that those 27 employees who were not retained were further offered Ex- gratia compensation as a result of intense negotiations and upon insistence of numerous stakeholders to further appease their dissatisfaction after not being re-employment by the hotel. Being satisfied that all the Applicants have been paid more than their legal entitlements, we are of the view that they are not merited any further compensation for economic loss or moral damages as claimed.’

Hence the Application before the Employment Tribunal was dismissed.

2. The Appellants appealed against the said Ruling and the grounds of Appeal are as follows:
 - a) The Honourable Tribunal erred in failing to award the Appellants moral damages for the anxiety, stress and depression suffered by the Appellants, following their abrupt termination by the Respondent.

Submissions of Counsels:

3. Counsel for the Appellants relied on the law, namely Article 1149 (2) of the Civil Code of Seychelles Act, 2020 and submitted to the Court that although the Appellants were paid their statutory dues by the Respondent, the Appellants have suffered moral damages from their abrupt termination, for which the Respondent is liable.
4. Counsel further submitted that many of the Appellants gave evidence that as a result of their termination, they remained unemployed and without a salary for several months which caused them to suffer from stress, anxiety, and depression as most of them were breadwinners of the family and could not pay their bills and/or meet their obligations on time.

5. Counsel submitted to the Court that the Appellants gave evidence as follows;
 - A) That it took them several months to gain permanent employment following their abrupt termination;
 - B) The Appellants have deponed that although they did gain permanent employment, the salary that they received was much lower than their previous salary causing them to face financial difficulties;
 - C) Many of them have deponed that they suffered depression, whereby they could not get up to conduct their daily duties, go outside or shower and suffered from alcohol abuse;
 - D) They suffered illness, such as high blood pressure and insomnia.
6. At this juncture, this Court would like to point out that apart from citing one provision of the Law, Counsel for the Appellants has neither cited nor advanced any authorities to the

Court as to whether the Employment Tribunal has the power to award moral damages as a result of the termination of a contract of employment of an employee by the Employer.

7. On the other hand, Counsel for the Respondent submitted to the Court that this Court is to determine whether the Employment Tribunal has the power to award moral damages within the confines of the Employment Act.
8. Counsel for the Respondent relied on the law namely section 73(A) of the Act, Schedule 6 and Section 3(1) of Schedule 6 of the Employment Act which provides that the Tribunal shall hear and determine employment and labour related matters.
9. Counsel further submitted to the Court that Section 3(3) of Schedule 6 excludes the award of damages relating to personal injuries.
10. Counsel for the Respondent submitted that since the law is silent on this issue, then the Court does not have the power to award moral damages and economic loss and hence Counsel submitted that the powers to award exemplary damages should have been explicitly provided in the Employment Act and as such the Tribunal cannot consider moral damages.
11. Counsel for the Respondent relied on the case of **Bergue V Fregate Island (2001) SLR 261** and the case of **Arthur Servina V Indian Ocean Tuna Limited (2012) SCCA 25** and submitted to the Court that moral damages cannot be awarded for a matter of grievances falling within the Jurisdiction of the Act for the simple reason that it is not provided for in the Act.
12. Counsel further submitted that since the sole ground of Appeal is that the Tribunal ought to have given moral damages, the Appellants have thus conceded that their termination was lawful and hence if their termination was lawful, what fault would have been committed by the Respondent. Furthermore, according to Counsel, the Appellants were well compensated for their termination being paid above and beyond what the law obligated them to pay of which they were paid additionally from their legal dues such as service charge and ex-gratia bonus. Furthermore, the majority of the Appellants managed to find new jobs within a matter of weeks of which he submitted that they were minimally prejudiced by their termination of Employment.

The Law:

13. Section 3(1) of Schedule 6 of the Employment Act states that;

“The Tribunal shall have exclusive jurisdiction to hear and determine employment and labour related matters’

14. Section 3(3) of Schedule 6 provides that;

“The Tribunal shall not hear and determine any claim relating to damages for personal injuries”.

15. Section 7 of Schedule 6 provides that;

“At the conclusion of the proceedings, the Tribunal shall in addition to any other remedies provided under this Act, award compensation or cost or make any other orders as it thinks fit”.

Determination:

16. The ground of Appeal as it stands revolves around a narrow issue which the Court has to ~~decide, namely whether the Employment Tribunal has the power to award moral damages.~~ From the reading of the above provisions of the Employment Act cited in paragraphs 13, 14 and 15 of this Judgment, it is evident that the law is silent as to whether the Court can award moral damages.

17. In the case of **Rosette V/S Union Lighterage Co 1995 SCAR Civ App 16 of 1994**, whereby the Appellant had lodged a grievance with the Ministry of Employment and was awarded statutory benefits for unjustified termination of employment, alleging that the manner and circumstances of the termination were particularly distressing to him and that he had thereby suffered loss and damages. The Appellant commenced his action against the Respondent Claiming the total sum of R64,200.00 at R14,200, being loss of five months’ salary and R50,000 being moral damages. Ayoola JA stated the following;

“It is evident that the cause of action and substratum of his action is unjustified termination. If the termination was justified, no cause of action could be founded solely on the manner and circumstances of termination”.

His Lordship further stated that:

“The remedy and relief which attend an unjustified termination of a contract have been fully set out by the legislature in the Act. If the Legislature had intended that additional compensation was to be awarded, having regard to the manner and circumstances of the termination, it would have so provided. The tenor of the Act is fully to define the rights and liabilities of parties of a contract of employment upon termination of such contract in the provisions of the Act without recourse to the provisions of the Civil Code, common law or any other law. It could not be the intention of the Legislature that upon an allegation of unjustified termination of a contract of employment, the worker could initiate grievance procedure under the Act or elect to pursue his remedy for damages or other relief in the Court or seek his remedy both under the Act and under the general law. In my view, the Act provided a new remedy which is substitutional and not an additional remedy. It seems both reasonable and just that the Act having made adequate provisions for compensation and for dealing with cases of unjustified termination of contracts of Employment, would take away the jurisdiction of the Court to determine those same questions arising from an unjustified termination or indeed touching on whether or not there had been an unjustified termination.”

His Lordship further held that;

“A wrongful termination of contract of employment is a breach of contract. It may be done in a manner as to attract aggravated damages, but it does not by that fact become a delict. However, if in the course of terminating a contract the employer committed a delict, such, for instance as libel or assault, that act which amounted to the delict would be a separate cause of action apart from the unjustified termination. Such is not the position in this case in which what was claimed may in appropriate circumstances only be a head of damage in a claim for unjustified termination”.

18. In the case of **Alcindor V/s Plantation Club (2000) SLR**, Judhoo J. relied on the decision of **Rosette V/s Union Lighterage** supra and held;

“If an employee has received statutory benefits for unjustifiable termination under the Employment Act, that employee is barred from commencing new proceedings against an employer based on the same cause of action. If in the course of a termination of a contract, the employer committed a delict against the employee, the delictual act would be a cause of action separate from unjustified termination.”

19. In the case of **Bergue v Fregate island Ltd (2001) SLR**, whereby the competent officer had ruled that serious disciplinary offences of repeatedly failing to obey reasonable orders given by the Defendant had not been proved and ordered the Plaintiff to pay R18,866.05 to the

Defendant as legal benefits under the Act. The Plaintiff sued the defendant for moral damages in the sum of R 100,000. Judhoo J stated:

“In the present circumstances, the Plaintiff having lodged a grievance procedure with the Ministry of Employment and Social Affairs and having been awarded statutory benefits for unjustified termination of employment, the case falls squarely within the decision of the Court of Appeal in **Antoine Rosette V/s Union Lighterage Appeal no 16 of 1994**”.

20. The Appellant has submitted to this Court that as a result of their aforesaid termination, they remained unemployed and without a salary for several months which caused them to suffer from stress, anxiety and depression and for the purpose of their claim, they also relied on Article 1149(2) of the Civil Code of Seychelles Act, 2020. It appears that the Appellants are relying in the present matter on one cause of action, namely the circumstances leading to the moral damages is as a result of their termination of Employment. Hence the facts and circumstances falls on all square with the case of **Rosette V/s Union Lighterage** (supra), the case of **Alcindor V/s Plantation Club (2000) SLR** and the case of **Bergue V Fregat Island Limited (2001) SLR** and hence this Court shall follow the afore-mentioned cases.
21. This Court holds that if the Legislature had intended that additional compensation was to be awarded having regard to the manner and circumstances of the termination, it would have so provided. ~~There is no provision of the Employment Act that allows the Employment Tribunal to award moral damages to an Employee as a result of his termination of Employment, be it unjustified termination or Lawful termination, and hence, since it is not expressly provided in the Employment Act, the Employment Tribunal therefore has no power to grant such a remedy, namely moral damages to the Appellants and hence, this Court finds that the Employment Tribunal did not erred in this respect as to ground 1 of Appeal.~~
22. It is also a fact that the Appellants have not appealed against the said decision of the Employment Tribunal which held that the termination was lawful. Hence the Appellants are deemed to have accepted that the termination of employment of the Appellants were lawful. Hence, it could not be said that the Employer committed a fault of which the Employer would be liable in damages be it moral damages. This Court has also considered the law namely section 7 of Schedule 6 of the Employment Act which provides that, “At the conclusion of the proceedings the Tribunal shall in addition to any other remedies provided under this Act, award compensation or cost or make any other orders as it thinks fit”.
23. This Court is of the view that such a provision of the law gives a wide discretion to the Court to make compensatory award in addition to any other remedies provided under the Act which is this Court’s view that it should be applied when the Employer has been reckless in the termination of Employment of the Employee, when there has been an unjustified termination

of the contract of employment of the employee by the employer of which the employer had not followed due process under the Employment Act which is not the case in the present matter. The present case is different since the Employment Tribunal has ruled that the termination was lawful and the Appellants has not raised this as a ground of Appeal that it was unjustified of which by not raising it they are deemed to have accepted that their termination was lawful . Furthermore, since the Appellants have been paid compensation well beyond their legal entitlement under the Act, since they have received in addition to their legal dues payment as to service charge and an Ex-gracia bonus, this Court holds that it shall not interfere with findings of the Employment Tribunal as regards to compensation awarded to the Appellants.

24. As a result of the above, I accordingly dismiss the Appeal with cost.

Signed, dated and delivered at Ile du port on the 10th March 2023.



Esparon J

